

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

Chambers of
Leda Dunn Wettre
United States Magistrate Judge

Martin Luther King Federal Building
& U.S. Courthouse
50 Walnut Street
Newark, NJ 07101
(973) 645-3574

January 15, 2019

To: All counsel of record

LETTER ORDER

RE: *Thomas Liddell v. David Green, et al.*
Civil Action No. 17-cv-12841-SDW-LDW

Dear Counsel:

Plaintiff *pro se*, a state prisoner, brings this action for injuries he sustained on May 27, 2016 while being transported by the New Jersey Department of Corrections ("NJDOC"). See Second Amended Complaint, ECF No. 21. Plaintiff asserts claims against the NJDOC and the officers involved in the incident for violations of the Eighth Amendment, deliberate indifference, negligence, and negligent supervision. See *id.*

Plaintiff filed the initial complaint on December 7, 2017, and has since amended the complaint twice. See ECF Nos. 1, 9, 21. On April 3, 2018, the Court entered a Pretrial Scheduling Order requiring any requests for leave to file a motion to amend pleadings to be filed no later than June 28, 2018 and that fact discovery was to remain open until July 30, 2018. ECF No. 18. At plaintiff's request, the Court issued an Order extending fact discovery to December 31, 2018 and the time to amend pleadings was extended to October 12, 2018. ECF No. 50.

Before the Court now are plaintiff's motions for default judgment against defendant David Breen, for leave to file a third-amended complaint, and for an extension of discovery. ECF No. 27. This Letter Order will address these in turn.

Plaintiff seeks entry of default against defendant David Breen for failing to respond to the Second Amended Complaint. ECF No. 59. Federal Rule of Civil Procedure 55(a) allows for entry of default "[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend." David Breen, the defendant against whom entry of default is sought, filed a responsive pleading to the Second Amended Complaint on August 17, 2018. ECF No. 44. Therefore, entry of default against this defendant is inappropriate and plaintiff's motion is denied.

Plaintiff next seeks leave to file a Third Amended Complaint to add a claim for a violation of his Fourteenth Amendment rights under the state created danger doctrine. ECF No. 62. As stated above, the deadline to file a motion to amend pleadings passed in this matter on October 12, 2018. As plaintiff's motion was sent to the Court on November 30, 2018, it is untimely. Federal Rule of Civil Procedure 16 provides that the scheduling order issued by the Court "may be modified only for good cause and with the judge's consent." Fed. R. Civ. P. 16(b)(4). The "good cause" requirement places a burden on the moving party to show that it exercised due diligence in obtaining the knowledge necessary to move to amend. *See Race Tires Am., Inc. v. Hoosier Racing Tire Corp.*, 614 F.3d 57, 84 (3d Cir. 2010). Here, plaintiff cites no good cause to extend the deadline previously set by the Court, and plaintiff's motion for leave to amend is denied. Plaintiff has had ample time to seek to amend his complaint and indeed has done so twice already. He does not claim to have discovered any new facts that would justify an amendment at this late stage of the case.

Finally, plaintiff seeks an extension of time to complete discovery and to compel defendants to respond to written discovery. ECF No. 63. Defendants also seek an extension of discovery, as counsel has been unable to complete written discovery at this point. ECF No. 66. Accordingly, plaintiff's motion to extend discovery is granted and defendants shall respond to written discovery. Fact discovery is extended in this matter for a **FINAL** time to **March 4, 2019**. Status letters shall be provided to the Court on or before **March 1, 2019**, which shall address the parties' positions on the next steps they wish to take in litigating this case (including requests for an expert discovery schedule, requests to file dispositive motions, etc).

The Clerk of Court is directed to terminate the motions at ECF Nos. 59, 62, and 63.

SO ORDERED this 15th day of January, 2019.

s/ Leda Dunn Wettre
Hon. Leda Dunn Wettre
United States Magistrate Judge

Orig: Clerk
cc: Counsel of Record